

## MINUTES



## REGULAR MEETING OF THE PLANNING COMMISSION, CITY OF HAYWARD

Council Chambers

Thursday, December 11, 2003, 7:30 P.M.

777 "B" Street, Hayward, CA 94541

### MEETING

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m. by Chairperson Zermeño, followed by the Pledge of Allegiance.

### ROLL CALL

Present: COMMISSIONERS Bogue, McKillop, Sacks, Fraas, Halliday, Thnay  
CHAIRPERSON Zermeño  
Absent: COMMISSIONER None

Staff Members Present: Anderly, Conneely, Gaber, Looney, Pearson, Patenaude

General Public Present: Approximately 25

### PUBLIC COMMENT

Chairperson Zermeño announced that items 3 and 4 would be continued until January 22, 2004.

### AGENDA

1. **Site Plan Review No. PL-2002-0648 and Variance No. PL-2003-0669 – Sanjiv Bhandari for BKBC Architects, Inc. (Applicant) / Dr. Dharam Salwan (Owner) - Request to Construct a Mixed-Use Building with Ground-Floor Retail and Three Second-Floor Condominiums and a Variance to Allow Parking Within 5-Foot Rear Yard Setback – The property is located at 22605 Second Street, at the Corner of B Street**
2. **Tentative Parcel Map 8206 PL-2003-0501 and Variances to Property Dimensions – Mary Costa (Owner/Applicant) - Request to Subdivide a Parcel, Approximately 9,454 Square-Feet, into Two Residential Parcels and to Allow a Variance for the Reduction of Minimum Lot Width – The Project is Located at 1210 D Street**
3. **Use Permit PL-2003-0075 – Pick-Your-Part Auto Wrecking (Applicant/(Owner) - Request to Continue Operation of an Automobile Dismantling/Recycling Business – The Project is Located at 2885 West Winton Avenue**
4. **Revocation of Use Permit Application No. 80-3 E & J Auto Wreckers / Daniel Wheat (Owner) - For an Auto Wrecking Facility – The Project is Located at 2851 West Winton Avenue**

### PUBLIC HEARINGS

1. **Site Plan Review No. PL-2002-0648 and Variance No. PL-2003-0669 – Sanjiv Bhandari for BKBC Architects, Inc. (Applicant) / Dr. Dharam Salwan (Owner) - Request to**

**DRAFT**

Construct a Mixed-Use Building with Ground-Floor Retail and Three Second-Floor Condominiums and a Variance to Allow Parking Within 5-Foot Rear Yard Setback –The property is located at 22605 Second Street, at the Corner of B Street

Commissioner Halliday stepped down for this item since the property in question was next door to her church and she thought she might not be impartial.

Associate Planner Pearson gave the staff report and explained the history of the project. This proposal is for an 8,800 sq. foot building. The size of the building is modified from his previous application. Although the Downtown Design Plan encourages a four-foot setback on buildings, staff supports the applicant's request for no setbacks from the sidewalk to continue the present street pattern, and encourage pedestrian activity. He noted that the applicant has submitted a parking study documenting that there are parking spaces available in Municipal Parking Lot Number 4. He then explained the reasoning behind the opposition of various neighbors including the business building across the street and from the church next door. He explained the need for the variance. He noted that although the church would like to continue access through the gate at the back of the property, they do not have an easement. Staff recommended adoption of the plan.

Commissioner McKillop asked about the gate at the church toward the back of the property and whether there would be access to the area.

Associate Planner Pearson explained that the only access from the back of the church property to the street would be along a corridor for foot-traffic, but not for an automobile.

There was discussion regarding additional parking variances.

Associate Planner Pearson explained that any future variance requests would have to go through the regular public hearing process.

Chairperson Zermeno asked about the safety of removing underground equipment related to the former service station and how safe it would be to the public.

Associate Planner Pearson explained the process for the Fire Department monitoring the site and the approval process. The Hazardous Materials Division of the Fire Department would have to approve any clean up of the area.

Commissioner Sacks asked about implications on the time frame for the project if there is extensive clean up.

Associate Planner Pearson indicated that the permit would be good for one year. If extensive clean up is required or needed, the applicant could apply for an extension.

In response to Chairperson Zermeno's question regarding the business owner across the street and her concerns about illegal parking, staff reported that she had not been contacted.

However, Associate Planner Pearson reported that the parking study shows that there is adequate



parking in the municipal parking lot and sufficient on-street parking.

Principal Planner Patenaude added that he has spoken with the owner in regards to another near by project and has advised her as to signage in enforcing parking regulations.

The public hearing opened at 7:45 p.m.

Nancy Schluntz, a congregation member of the First United Methodist Church, appreciated the changes to this project. These are an improvement. She pointed out that only two parking spaces will be lost, but the lot itself is used and filled to capacity quite often. As to the easement question, there is no legal or recorded easement for members use of the lot. The rear gate has been available since 1979 at least. She said the Church regrets that the former owner did not notify them that the property was going to be sold, therefore neither the issue of an easement nor access were addressed. They would like to request the conditions include recommendation of an access easement and the site plan modified to accommodate that access.

Randall Smith, pastor of the Church, said thus far the changes made in the plans to the building are appreciated, but asked for an access easement to the back gate. Also the staff report does not address concerns related to both the traffic pattern and safety issues regarding the curb cut onto Second Street. There is nothing about a study regarding the curb cut and the traffic patterns. He thought the size of the project was inappropriate to the size of the lot. The Church is still against approval of the project. The density is not reasonable. The lot's size indicates the project is inappropriate.

Cecilia Van Hooten said she lives next door to the property. She said the drawing of the project is not the same picture as that shown on the site. She wondered whether the City ever checks the public parking lot for maintenance issues, which is next to the telephone company. No one else checks it. She said she has asked Mr. Salwan to make the corner a parking lot.

Commissioner McKillop asked her about her house.

Mrs. Van Hooten said her house is located on Second and C Street.

Liz Morales, a Commpre organizer, said she was speaking for the Eden Youth leaders. This property is across from their offices. Project Eden Youth Services is across the street. She was addressing the use for the retail space, and expressed opposition to any liquor sales in this location.

Lupe Compean, owner of the building at B and Second, discussed the parking problems related to another nearby building owned by Mr. Salwan. She said she would have her lawyer fight against the building. There is no parking. She presented a letter discussing the parking in the area. She stated that she is very against the building.

Commissioner Sacks asked her about the parking in her lot now.

Ms. Compean explained that presently there is no parking for the construction trucks.

Chairperson Zermeño asked staff about the present construction going on.

Commissioner Fraas asked whether her building conforms to parking requirements. She was told the parking requirements could be met by on-site parking in addition to the payment of in-lieu fees.

Sanjiv Bhandari, architect for the project, discussed the redesign of the project and the re-submittal. He noted that based on previous comments, studies on parking were done as well as a soils analysis. He discussed the design saying they were trying to achieve a harmonious but uplifting corner. He said they created a base line and colors, which were carried from other nearby buildings. In answering questions regarding the tank in the ground, he noted that there is no tank. The gas station was there more than 50 years ago so the level of contamination is below the hazardous level. Everything will be removed according to regulations. He stated they are also building another building on the other side. He stated they have looked at the whole block, since Dr. Salwan just bought a building on A Street. They will be working to continue to upgrade the buildings. Regarding the questions about the activities and parking, presently there is illegal parking on B Street. He said the access is not conforming. Dr. Salwan was willing to sell the lot to the church, and was willing to listen to joint proposals. The new building under construction is Dr. Salwan's building where he will have his offices.

Commissioner Fraas expressed confusion as to why the required parking was not incorporated within the many iterations of the designs. She said she had previously worked across the street and the parking is horrendous.

Commissioner Thnay asked about access from the church in the back for a gate.

Mr. Bhandari explained about their handicapped space and the need for handicap access which would be compromised were a gate installed to the church property.

Commissioner Bogue asked about pedestrian access through the back of the property. He then asked about the price for which they were offering the lot to the Church.

Mr. Bhandari said it would be the same price as a few years ago. The same price which Dr. Salwan paid, including the cost of the work they have put into the plans and project.

Commissioner Bogue asked whether they had ever had any plans that met the parking requirement for this site.

Mr. Bhandari explained that was why they moved to a residential design. This would be the smallest you can build on this lot. He added that he could not respond to the number of tenants or shops in the retail space since it is economically driven.

Chairperson Zermeño discussed access to the back and being a "Good Neighbor." He suggested



allowing walking through the parking lot to the gate.

Mr. Bhandari said they could be open to that.

Commissioner Sacks asked staff whether the access is part of the Commission's deliberation or something the two property owners should decide.

Assistant City Attorney Conneely explained that the question of access or an easement is a property owner decision. The City of Hayward would violate the constitution by taking one part of a property and giving it to another.

Commissioner Sacks then asked the applicant about the parking survey and parking spaces. She asked him to state the implications of the survey.

Mr. Bhandari explained that DKS Associates did the survey and evaluated parking. They determined that there are sufficient spaces available within walking distance to this lot. Dr. Salwan has also purchased another lot on the other side of the house, which would be available for parking.

Frank Marymee commented about the impact on the church as a downtown church. They are serving a lot of people and different organizations that would not be served. He suggested it would behoove the Commission to protect the concept of a downtown church.

John Marks, also a member of the congregation, said he thought this project was a practical joke. There is not enough room; it is built right on the sidewalk. He said he could not understand who would want to live there and what business would be practical.

The public hearing was closed at 8:25 p.m.

Principal Planner Patenaude explained that staff worked with the applicant for as much parking on the site as would be viable. Any additional parking would require another drive aisle and eliminate a corner retail shop that would not be a benefit to the applicant. This was a matter of maximization of parking and the building. Thus the reason for fees in lieu of parking where it is not practical to provide parking on the site, as long as there is parking within a reasonable distance of the site.

Commissioner Thnay suggested trusting the judgment of staff and the "smart growth" downtown plan. The concept is to get people to live and work downtown, and to use and enjoy the amenities of the downtown area. He cited the parking study and referred to public parking on City Lot 4. He said he was sure there was not a serious parking problem in this area based on the study by DKS and staff's conclusion. This is something to brighten up the area and the land. He said he would like to see it. As to the easement, even though the City of Hayward cannot do anything in this regard, the applicant indicates that he is willing to talk to the church. He added that he does

appreciate Dr. Salwan's commitment to downtown Hayward.

Commissioner Fraas expressed confusion regarding the driveway cut onto Second Street and whether there has been discussion about the traffic dangers of this cut.

Principal Planner Patenaude explained that the cut is as far from the intersection as possible. The traffic engineers agree that this is the best solution.

Commissioner Fraas indicated that the church reported that the present curb cut was closed because it was dangerous.

Associate Planner Pearson explained that he could find no reason why it was closed.

Commissioner Bogue asked about the condominiums and why no parcel map was included. There will be four units, three residential and one commercial unit to comprise the Homeowner's Association. He asked why there was not a parcel map. He then asked what things would be charged to commercial owners and which charged to residents. He asked how this would be determined.

Development Review Engineer Gaber explained that a parcel map would be required to subdivide the spaces. He noted the parcel map would be required, reviewed and approved by the County. As to the Homeowners/Commercial Association, the City of Hayward would see and review a joint association agreement.

Planning Manager Anderly explained that the applicant would be required to prepare the documents and show them to staff, at which point staff could ask for modification to the documents if unreasonable or unfair.

Commissioner Sacks **moved**, seconded by Commissioner Bogue, approval for the staff recommendation.

Commissioner Sacks indicated that there were a couple of issues that keep surfacing. She noted that on the site plan portrayal, the applicant has not built up to the side property line, although the Church had done so. The space between the two projects is a gift to the church. She noted that parking has gone from 0 to 9 legal spaces on this lot. There is also plenty of parking within walking distance.

Commissioner McKillop said she saw two issues. One is the church access to the rear and parking. Since it is clear the Planning Commission cannot require access, it is not an issue for the Commission to require it. As to parking, the applicant has redesigned to accommodate parking. He has also proposed the option of further parking on another near-by site, which indicates the applicant is working hard to address the issues brought by the church. She added that the open space is also a gift to the church, so she would be supporting the motion as well.

Commissioner Bogue said he would also be supporting the motion since it is an improvement over the previous project. He wanted friendly amendments to the motion to include decorative architectural lighting on the building, and suggested that grates be a requirement around the street



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trees. He commented that this project is smaller than the previous proposal. This building wraps around the corner and has setbacks. He wanted to insure that there is no fence proposed between this building and the church. The owner and church would have to work out maintenance of the landscaping between them. He then asked for a friendly amendment requiring that no fence be built along the length of the church building on the property line between the properties.

Mr. Bhandari said he thought this was a valid comment. He said they had intended to put a fence at the edge of the building. If the church allows, they will carry it to the wall of the church both at the back and the front of the property. There is no intention of building a fence between the properties to run the length of the properties.

Commissioner McKillop then asked about the interface between Mrs. Van Houghton house and this property. She then asked for a friendly amendment proposing the applicant to provide good neighbor fence between the residence and the property. This was accepted.

Planning Manager Anderly said staff would work it out with both parties.

Commissioner Fraas explained that her biggest concern is that the applicant needs to work with the church and neighbors. They have been there a long time and contribute a great deal to the City of Hayward. As to the parking, it seems arbitrary, when one developer makes a presentation they wave the requirement and then not. She suggested an evaluation on the consistency in the area. She said she would not be supporting the motion because of parking.

Chairperson Zermeño asked about consideration for uses of no liquor. He added that he would hope applicant would work with a "good neighbor policy." Because there is no fence, the developer needs to work on their relationship. He indicated he would not like to see a parking lot on that corner. This will be good for downtown and might be the best use for that area.

Principal Planner Patenaude explained that any proposal for a liquor store or that type of use would be brought before the commission.

The motion **carried** by the following vote:

AYES:	COMMISSIONERS	Thnay, Sacks, McKillop, Bogue
	CHAIRPERSON	Zermeño
NOES:	COMMISSIONER	Fraas
ABSENT:	None	
ABSTAIN:	Halliday	

2. **Tentative Parcel Map 8206 PL-2003-0501 and Variances to Property Dimensions – Mary Costa (Owner/Applicant)** - Request to Subdivide a Parcel, Approximately 9,454 Square-Feet, into Two Residential Parcels and to Allow a Variance for the Reduction of Minimum Lot Width – The Project is Located at 1210 D Street

Development Review Engineer Gaber described the need for a variance as well as the property itself. The lot fronts onto two streets so it can be subdivided without the need for a flag lot configuration. The variance is needed for the lot width. He explained the findings for approval of the variance. A second home is allowed by the zoning code, and encouraged by the Council's homeownership policy. Staff proposed recommendation of the application.

Commissioner Fraas asked whether the driveway access would be on Bellina.

Development Review Engineer Gaber said the new lot would front on Bellina.

Chairperson Zermefio commented on the staff report and that he liked the reference to the homeownership policy.

The public hearing opened at 8:58 p.m.

Wayne Low, speaking for the owner who is his mother-in-law, said he was happy with the staff report and hoped the Commission would approve the application. They have owned it since 1942 and they plan to sell both parcels.

The public hearing was closed with no further comments at 9:00 p.m.

Commissioner Bogue pointed out the comments about no mature trees on the lot to have to save and further comment with regard to the tangerine tree on the lot, which would be saved.

Commissioner McKillop moved, seconded by Commissioner Sacks, to approve the staff recommendation.

**The motion passed unanimously.**

3. **Use Permit PL-2003-0075 – Pick-Your-Part Auto Wrecking (Applicant/(Owner) - Request to Continue Operation of an Automobile Dismantling/Recycling Business – The Project is Located at 2885 West Winton Avenue**

**This item was continued to January 22, 2004.**

4. **Revocation of Use Permit Application No. 80-3 E & J Auto Wreckers / Daniel Wheat (Owner) - For an Auto Wrecking Facility – The Project is Located at 2851 West Winton Avenue**

**This item was continued to January 22, 2004.**

#### **ADDITIONAL MATTERS**

5. **Oral Report on Planning and Zoning Matters**  
No report but adjournment to Work Session

6. **Commissioners' Announcements, Referrals**



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Commissioner Bogue announced a candidates' night on February 4, 2004 for Southgate Homeowner's Association. The interviews will be held at the County building on Turner Court.

Chairperson Zermeño announced that a Pollo Loco would be coming to Hayward, it will replace the Burger King near the Hayward Plunge.

### APPROVAL OF MINUTES

- October 23, 2002 **APPROVED**
- November 6, 2002 **APPROVED**

### ADJOURNMENT 9:05 p.m.

The meeting was adjourned by Chairperson Zermeño at 9:05 p.m. to work session Room A

Review of Legal Principles relating to Land Use, Conflicts of Interest and the Brown Act

APPROVED:

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Christopher Thnay, Secretary  
Planning Commission

ATTEST:

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Edith Looney  
Commission Secretary